

Walker, Chandniok & Co

The Companies Act, 2013

The dawn of a new era

Update on Specific provisions

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ICAI, BKC

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Companies Act, 2013

The dawn of a new era...



Companies Act 2013 – Agenda

- Some new concepts
- Corporate Social Responsibility & other provisions
- Other Miscellaneous provisions

Companies Act 2013 – Some new concepts

One Person Company (OPC)

- A Company which has only one person as a member
- The memorandum of OPC shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company
- FS may not include the cash flow statement

Companies Act 2013 – Some new concepts

Small Company

A Company other than a public company whose:

- paid-up share capital does not exceed 50 lakh rupees or such higher amount as may be prescribed (not exceeding 5 crore rupees); or
- turnover as per its last P & L A/c does not exceed 2 crore rupees or such higher amount as may be prescribed (not exceeding 20 crore rupees):

Provided that nothing in this clause shall apply to—

- a holding company or a subsidiary company;
- a company registered under section 8; or
- a company or body corporate governed by any special Act;

FS may not include the cash flow statement

Companies Act 2013 – Some new concepts

Dormant Company

- Where a company is formed and registered under this Act
 - for a future project or to hold an asset or intellectual property
 - and has no significant accounting transaction,
- Such a company or an inactive company may apply to the Registrar for obtaining the status of a dormant company
- "Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed FS and annual returns during the last two financial years;

FS may not include the cash flow statement

Companies Act 2013 – Some new concepts

Serious Fraud Investigation Office (SFIO)

- The Central Government (CG) shall, by notification, establish an office to be called the SFIO to investigate frauds relating to a company
- Provided that until the SFIO is established, the SFIO already set-up by the CG in terms of GOI Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the SFIO for the purpose of this section
- The SFIO shall be headed by a Director and consist of such number of experts to be appointed by the CG from the fields of banking, corporate affairs, taxation, forensic audit, capital market, information technology, law or such other fields as may be prescribed

Companies Act 2013 – Some new concepts

Serious Fraud Investigation Office (SFIO)

- The CG shall, by notification, appoint a Director in the SFIO, who shall be an officer not below the rank of a Joint Secretary to the GOI having knowledge and experience in dealing with matters relating to corporate affairs
- The CG may appoint such experts and other officers and employees in the SFIO as it considers necessary for the efficient discharge of its functions under this Act
- The terms and conditions of service of Director, experts, and other officers and employees of the SFIO shall be such as may be prescribed

Fraud and Class Action

Key changes

Fraud

- Specific provision relating to **any act of fraud** has been included in definitions which was not there in 1956 Act
- The terms '**wrongful gain**' and '**wrongful loss**' have also been defined

Class Action Suits (CAS)

- CAS will allow **requisite number** of members or depositors with common interest, to file an **application with NCLT**, if they feel that the **affairs of the company** are being conducted in a manner **prejudicial to their interest**

Fraud and Class Action

- CAS can be filed against the **audit firm** or **expert advisors** for improper or misleading statement.
- Class action suits **cannot be filed** against banking company.

Analysis

- The inclusion of separate provision with such **wide amplitude** and **stringent consequences** for fraud can be reckoned as a **strong message and deterrent** against such acts.
- It seems to **include all the wrongful acts**, whether or not, they lead to any **wrongful gain or loss**
- CAS will help in **improving the quality of financial reporting** as well as the **quality of corporate governance**

Fraud and Class Action

- It will **prevent company** from frivolous and multiple suits.
- It will **empower small investors** to file collective suits with low litigation costs due to aggregation of fragmented claims.

Draft rules

- The draft rules provide that 10% of the total number of **members** or members holding not less than 10% of **issued share capital** of the company or 10% of the total number of **depositors** besides the fact that 100 members and 100 depositors can file class action suits.

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**Corporate Social Responsibility
&
Other provisions**

Corporate Social Responsibility

Key changes

- Select companies to form CSR committee
- 2% of average net profit of past 3 years
- Preference to the local areas where it operates
- CSR activities include (listed in schedule VII)
 - eradicating extreme hunger and poverty
 - promotion of education
 - ensuring environmental sustainability
 - social business projects
 - contribution to the PM National Relief Fund, etc.

Corporate Social Responsibility

Analysis

- CSR is a **good** governance initiative
- **Comply or disclose** reasons for non- compliance

Draft Rules

- **Tax treatment** to be in accordance with the IT Act as may be notified by CBDT
- CSR activities to be undertaken **within India**
- Should **not be exclusively** for the benefit of employees of the company or their family members

NCLT

Key changes

National Company Law Tribunal

- NCLT to have jurisdiction for approval of merger, corporate reorganization, capital reduction, granting relief in case of mismanagement and oppression etc.
- Appeals against the order of NCLT shall lie to NCLAT and an appeal arising out of order of NCLAT on any question of law shall lie to Supreme Court

NCLT

Analysis

- NCLT to have **exclusive jurisdiction** to deal with Companies Act cases which will speed up the process of restructuring, winding up and other matters and will replace:
 - Company Law Board
 - Board for Industrial & Financial Reconstruction
 - Appellate Authority for Industrial and Financial Reconstruction;
and
 - District Court or High Court jurisdiction relating to all matters under the Companies Act.

NCLT

Draft Rules

- The draft rules relating to NCLT which are available for public comment propose that the rules **shall also be applicable for the proceedings before the NCLT in case of limited liability partnerships under LLP Act, 2008**

NFRA (National Financial Reporting Authority)

Key changes

National Financial Reporting Authority (NFRA)

- Monitor and enforce **compliance** with accounting and auditing standards;
- Oversee the **quality of service** of the profession;
- Not merely an **advisory body** but will have power to **investigate matters** of professional misconduct by CA's or firms;
- **No other body** shall initiate proceedings in matters where investigation initiated by NFRA;
- Will have the **powers vested in a Civil Court** while trying a suit.

NFRA (National Financial Reporting Authority)

Class action suits

- Will allow a **requisite number** of members or depositors with common interest, in a matter, to **file an application** in the National Company Law Tribunal ('NCLT') against the company / its management / its auditors or a section of its shareholders for **damages or compensation** if they are of the opinion that the management or conduct of the affairs of the company are being **conducted in a manner prejudicial to their interest.**

NFRA (National Financial Reporting Authority)

Analysis

- The constitution of the NFRA will bring in a significant change to the **current structure** of standard setting regulations;
- In the **absence of** significant anti-abuse provisions in the implementation of class action suit rules, **this can be misused**;
- The **new risks and liabilities** will enforce **more responsibility** into the role of an auditor.

NFRA (National Financial Reporting Authority)

Draft Rules

- Draft National Financial Reporting Authority Rules, 2013 **released** and NFRA structure **to have Committees** on Accounting Standards, Auditing Standards and on Enforcement;
- NFRA shall **undertake investigation or conduct quality review** of audit of following class of companies:
 - Listed Companies;
 - Unlisted companies with **net worth** or **paid up capital** of not less than **INR 500 crores** or **annual turnover** not less than **Rs.1,000 crores** as on 31st March of immediately preceding financial year; or
 - Companies having **securities listed outside India**

Special Courts

Key changes

Special Courts

- Central Government (CG) to establish these for speedy trial of offences;
- Special Courts to have liberty to try summary proceedings for offences punishable with imprisonment for a term not more than 3 years

Mediation & Conciliation Panel

- Facilitate arbitration between the parties during pendency of any proceedings before CG / NCLT / NCLAT
- CG to maintain this panel, consisting of certain number of experts having specific qualifications as may be prescribed

Special Courts

Analysis

- Special Courts to compound offences punishable with fine or imprisonment

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Other miscellaneous provisions

Other provisions

Key changes

Other miscellaneous provisions

- Whistleblower mechanism – all listed companies to set up a vigil mechanism for directors and employees to report genuine concerns
- Class action suits can be filed by a requisite number of members or depositors with NCLT against the company / its management / section of its shareholders for damages or compensation if they are of the opinion that the management or the affairs of the company are being conducted in a manner prejudicial to their interest.

Other provisions

Analysis

- Whistleblower mechanism accompanied by anti-abuse mechanisms would be a comprehensive measure.
- The companies need to develop a mechanism for keeping a check on insider trading and price sensitive information.
- The companies need to prepare a strong mechanism to ensure adherence to the rules and regulations as per the 2013 Act so as to avoid the rigorous penalties under the said 2013 Act.

Thank You